

Sec. 12-217ll. Tax credit for digital animation production companies. Regulations.

(a) As used in this section:

(1) "Commissioner" means the Commissioner of Revenue Services.

(2) "Department" means the Department of Economic and Community Development.

(3) "Digital animation production company" means a corporation, partnership, limited liability company or other business entity engaged exclusively in digital animation production activity on an ongoing basis, and that is qualified by the Secretary of the State to engage in business in the state.

(4) "State-certified digital animation production company" means a digital animation production company that (A) maintains studio facilities located within the state at which digital animation production activities are conducted, (B) employs at least two hundred full-time employees within the state, (C) is in compliance with regulations adopted pursuant to subsection (h) of this section, and (D) has been certified by the department.

(5) "Digital animation production activity" means the creation, development and production of computer-generated animation content for distribution or exhibition to the general public, but not for the production of any material for which records are required to be maintained under 18 USC 2257 with respect to sexually explicit content.

(6) "Full-time employee" means an employee required to work at least thirty-five hours or more per week, and who is not a temporary or seasonal employee.

(7) "Post-certification remedy" means the recapture, disallowance, recovery, reduction, repayment, forfeiture, decertification or any other remedy that would have the effect of reducing or otherwise limiting the use of a tax credit provided by this section.

(8) "Production expenses or costs" means all expenditures clearly and demonstrably incurred in the state in the development, preproduction, production or postproduction costs of a digital animation production activity, including:

(A) Expenditures for optioning or purchase of any intellectual property including, but not limited to, books, scripts, music or trademarks relating to the development or purchase of a script, screenplay or format, to the extent that such expenditures are less than thirty-five per cent of the production expenses or costs incurred by a digital animation production company in any income year. Such expenses or costs shall include all expenditures generally associated with the optioning or purchase of intellectual property, including option money, agent fees and attorney fees relating to the transaction, but shall not include any and all deferrals, deferments, profit participation or recourse or nonrecourse loans which the digital animation production company may negotiate in order to obtain the rights to the intellectual property;

(B) Expenditures incurred in the form of either compensation or purchases including

production work, production equipment not eligible for the infrastructure tax credit provided in section 12-217kk, production software, postproduction work, postproduction equipment, postproduction software, set design, set construction, props, lighting, wardrobe, makeup, makeup accessories, special effects, visual effects, audio effects, actors, voice talent, film processing, music, sound mixing, editing, location fees, soundstages, rent, utilities, insurance, administrative support, systems support, all reasonably-related expenses in connection with digital animation production activity, and any and all other costs or services directly incurred in the state in connection with a state-certified digital animation production company;

(C) Expenditures for distribution, including preproduction, production or postproduction costs relating to the creation of trailers, marketing videos, short films, commercials, point-of-purchase videos and any and all content created on film or digital media, including the duplication of films, videos, CDs, DVDs and any and all digital files now in existence and those yet to be created for mass consumer consumption; the purchase, by a company in the state, of any and all equipment relating to the duplication or mass market distribution of any content created or produced in the state by any digital media format which is now in use and those formats yet to be created for mass consumer consumption; and

(D) "Production expenses or costs" does not include the following: (i) Compensation in excess of fifteen million dollars paid to any individual or entity representing an individual, for services provided in a digital animation production activity and, on or after January 1, 2010, compensation subject to Connecticut personal income tax in excess of twenty million dollars paid in the aggregate to any individuals or entities representing individuals, for star talent provided in a digital animation production activity; (ii) media buys, promotional events or gifts or public relations associated with the promotion or marketing of any digital animation production activity; (iii) deferred, leveraged or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, but not limited to, producer fees, director fees, talent fees and writer fees; (iv) costs relating to the transfer of the digital animation tax credits; (v) any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the digital animation production activity; and (vi) any expenses or costs relating to an independent certification, as required by subsection (c) of this section, or as the department may otherwise require, pertaining to the amount of production expenses or costs set forth by a state-certified digital animation company in its application for a digital animation tax credit.

(b) (1) The Department of Economic and Community Development shall administer a system of tax credit vouchers within the resources, requirements and purposes of this section for digital animation production companies undertaking digital animation production activity in the state.

(A) For income years commencing on or after January 1, 2007, but prior to January 1, 2010, any state-certified digital animation production company incurring production expenses or costs in excess of fifty thousand dollars shall be eligible for a credit against

the tax imposed under chapter 207 or this chapter, equal to thirty per cent of such production expenses or costs.

(B) For income years commencing on or after January 1, 2010, (i) any state-certified digital animation production company incurring production expenses or costs of not less than one hundred thousand dollars, but not more than five hundred thousand dollars, shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to ten per cent of such production expenses or costs, (ii) any such company incurring such expenses or costs of more than five hundred thousand dollars, but not more than one million dollars, shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to fifteen per cent of such production expenses or costs, and (iii) any such company incurring such expenses or costs of more than one million dollars shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to thirty per cent of such production expenses or costs.

(2) Any credit allowed pursuant to this section may be sold, assigned or otherwise transferred, in whole or in part, to one or more taxpayers, provided no credit, after issuance, may be sold, assigned or otherwise transferred, in whole or in part, more than three times.

(3) All or part of any credit allowed pursuant to this section shall be claimed against the tax imposed under chapter 207 or this chapter, for the income year in which the production expenses or costs were incurred, or in the three immediately succeeding income years. Any digital animation tax credit allowed under this section shall be nonrefundable.

(4) Any digital animation production company receiving a digital animation tax credit pursuant to this section shall not be eligible to apply for or receive a tax credit pursuant to section 12-217jj.

(c) (1) Not more frequently than twice during the income year of a state-certified digital animation production company, such company may apply to the department for a digital animation tax credit voucher, and shall provide with such application such information and independent certification as the department may require pertaining to the amount of such company's production expenses or costs incurred during the period for which such application is made. Such independent certification shall be provided by an audit professional chosen from a list compiled by the department. If the department determines that the company is eligible to be issued a tax credit voucher, the department shall enter on the voucher the amount of production expenses and costs incurred during the period for which the voucher is issued and the amount of tax credits issued pursuant to such voucher. The department shall provide a copy of such voucher to the commissioner upon request.

(2) The department shall charge a reasonable administrative fee sufficient to cover the department's costs to analyze applications submitted under this section.

(d) If a state-certified digital animation production company sells, assigns or otherwise transfers a credit under this section to another taxpayer, the transferor and transferee shall jointly submit written notification of such transfer to the department not later than thirty days after such transfer. If such transferee sells, assigns or otherwise transfers a credit under this section to a subsequent transferee, such transferee and such subsequent transferee shall jointly submit written notification of such transfer to the department not later than thirty days after such transfer. The notification after each transfer shall include the credit voucher number, the date of transfer, the amount of such credit transferred, the tax credit balance before and after the transfer, the tax identification numbers for both the transferor and the transferee, and any other information required by the department. Failure to comply with this subsection will result in a disallowance of the tax credit until there is full compliance on the part of the transferor and the transferee, and for a second or third transfer, on the part of all subsequent transferors and transferees. The department shall provide a copy of the notification of assignment to the commissioner upon request.

(e) Any state-certified digital animation production company that submits information to the department that it knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a penalty equal to the amount of such company's credit entered on the digital animation tax credit certificate issued under this section.

(f) No tax credits transferred pursuant to this section shall be subject to a post-certification remedy, and the department and the commissioner shall have no right, except in the case of possible material misrepresentation or fraud, to conduct any further or additional review, examination or audit of the expenditures or costs for which such tax credits were issued. The sole and exclusive remedy of the department and the commissioner shall be to seek collection of the amount of such tax credits from the entity that committed the fraud or misrepresentation.

(g) The aggregate amount of all tax credits which may be reserved by the department pursuant to this section shall not exceed fifteen million dollars in any one fiscal year.

(h) The department, in consultation with the commissioner, shall adopt regulations, in accordance with the provisions of chapter 54, as may be necessary for the administration of this section.